

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ROBERT KESSLER, Plaintiff, -vs- APNA INVESTMENTS GROUP L.L.C., and MAHADEV INC., individually Defendant.	Cause No. 2:21-cv-83 SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
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COMES NOW, Plaintiff, ROBERT KESSLER (hereinafter the “Plaintiff”), through undersigned counsel, pursuant to FRCP Rule 15(a)(1), hereby files this Second Amended Complaint within 21 days of service of the Amended Complaint (DE 7) and sues APNA INVESTMENTS GROUP L.L.C, a Washington Limited Liability Company, and Mahadev Inc., a Washington Corporation, (hereinafter, “Defendants”), for injunctive relief, attorney’s fees and costs (including, but not limited to, court costs and expert fees), pursuant to 42 U.S.C. §12181, et. seq., commonly referred to as the “AMERICANS WITH DISABILITIES ACT” or “ADA” and alleges:

JURISDICTION AND PARTIES

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6 1. This is an action for declaratory and injunctive relief pursuant to Title III of the
7 Americans with Disabilities Act, 42 U.S.C. §12181, et. seq., (hereinafter referred to as the
8 “ADA”). This Court is vested with jurisdiction under 28 U.S.C. §1331 and §1343.

9 2. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 in that all events
10 and procedures giving rise to this Complaint occurred in this judicial district.

11 3. At the time of Plaintiff’s personal visit to Defendants’ public accommodation, prior
12 to instituting he instant action, Robert Kessler (hereinafter referred to as “Kessler”), was a resident
13 of the State of Washington, and suffered from what constitutes a “qualified disability” under the
14 Americans with Disabilities Act of 1990, and used a wheelchair for mobility due to this disability.
15 Plaintiff has an amputated leg. He is required to traverse with a wheelchair and is substantially
16 limited to performing one or more major life activities including, but not limited to walking,
17 standing and maneuvering.
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19 4. The Plaintiff personally visited, on or about October 20, 2020 Defendants’ premises
20 open to the public, but was denied full and equal access to, and full and equal enjoyment of the
21 facilities, services, goods, privileges and accommodations offered to others without disabilities;
22 because of his disability requirements. Plaintiff lives in King County, Washington and travels in
23 the surrounding areas near Defendants’ facilities on a regular basis for shopping, dining and
24 entertainment.
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1 5. Upon information and belief, APNA INVESTMENTS GROUP L.L.C., a
 2 Washington Limited Liability Company or Corporation, is the lessor and/or owner operator of the
 3 real property and/or premises that are the subject of this lawsuit, commonly referred to Pacific
 4 Chevron, located at 14415 Tukwila International Blvd., in Tukwila, Washington. Defendant own,
 5 leases, leases to, or operates a place of public accommodation as defined by the ADA and the
 6 regulations implementing the ADA, 28 CFR §36.201(a) and §36.104.
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8 6. Upon information and belief, Mahadev Inc., a Washington Corporation located at
 9 14415 Tukwila International Blvd., in Tukwila, Washington is the lessee, operator and/or owner
 10 of the real property (the “Subject Facility”). Each Defendant own, leases, leases to, or operates a
 11 place of public accommodation as defined by the ADA and the regulations implementing the ADA,
 12 28 CFR §36.201(a) and §36.104.
 13

COUNT I – VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT

16 7. On or about July 26, 1990, Congress enacted the Americans with Disabilities Act
 17 (“ADA”), 42 U.S.C. §12101, et. seq. Commercial enterprises were provided one and a half years
 18 from enactment of the statute to implement all its requirements. The effective date of the Title III
 19 of the ADA was January 26, 1992. 42 U.S.C. §12181; 20 C.F.R. §36.508(a).
 20

21 8. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the Subject Facility and
 22 real property in this case is a place of public accommodation under the ADA in that they are
 23 establishments which provide goods and services to the public.
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25 9. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the building and/or
 26 premises which is the subject of this action is a public accommodation covered by the ADA and
 27 which must be in compliance therewith as of the date of the Plaintiff’s visit.

1 10. The Plaintiff is informed and believes, and therefore alleges, that the Subject
2 Facility has begun operations and/or undergone remodeling, repairs and/or alterations since
3 January 26, 1990 and more specifically on or after March 15, 2012 as it pertains to 28 C.F.R. §
4 36.406.

5
6 11. Defendants have discriminated under the ADA, and continue to discriminate,
7 against the Plaintiff, and others who are similarly situated, by denying full and equal access to, and
8 full and equal enjoyment of, goods, services, facilities, privileges, advantages and/or
9 accommodations at Defendants' Subject Facilities in derogation of 42 U.S.C. §12101, *et. seq.*, and
10 as prohibited by 42 U.S.C. §12182 *et. seq.*, and by failing to remove architectural barriers
11 pertaining to the Plaintiff's disability pursuant to 42 U.S.C. §12182(b)(2)(a)(iv), where such
12 removal is readily achievable.

13
14 12. The Plaintiff has been unable to, and continues to be unable to, enjoy full and equal
15 safe access to, and the benefits of, all accommodations and services offered at Defendants' Subject
16 Facilities. Prior to the filing of this lawsuit, the Plaintiff visited the subject properties and was
17 denied full and safe access to all the benefits, accommodations and services of the Defendants.
18 Prior to the filing of this lawsuit, Kessler, personally visited Pacific Chevron, located at 14413
19 Tukwila International Blvd., in Tukwila, Washington, with the intention of accessing Defendants'
20 facilities, but was denied full and safe access to the facilities due to the inactions of removing
21 applicable barriers. Plaintiff intends to return to the Defendant's premises and public accommodate
22 upon the premises being made ADA compliant for access, but is currently deterred from returning
23 due to these barriers. As such, Plaintiff is likely to be subjected to reencountering continuing
24 discrimination at the premises unless it is made readily accessible to and usable by individuals
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1 with disabilities to the extent required under the ADA, including the removal of the architectural
2 barrier which remain at the premises.

3 13. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991, the Department
4 of Justice, Office of the Attorney General, promulgated Federal Regulations to implement the
5 requirements of the ADA, known as the Americans with Disabilities Act Accessibility Guidelines
6 (hereinafter “ADAAG”), 28 C.F.R. Part 36. Defendants facilities do not comply with these
7 Guidelines.
8

9 14. The Defendants’ premises are in violation of 42 U.S.C. §12182 *et. seq.*, the ADA
10 and 28 C.F.R. §36.302 *et. seq.*, and has and is discriminating against the Plaintiff. The Plaintiff
11 was deterred from encountering every non-compliant barrier at the premises due to the nature of
12 encountering some barriers that denied the Plaintiff’s full and equal enjoyment of the facility.
13 Therefore, the Plaintiff encountered the following specific barriers to access that include but are
14 not limited to the following, but also retains standing to allege non-compliance for any barrier not
15 encountered by the Plaintiff at the premises related to the Plaintiff’s specific disability
16 requirements under *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1047 (9th Cir. 2008):
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18

19 **VIOLATIONS**

20 15(a). Failure to provide ADA compliant parking stall striping and markings, in violation
21 of 2010 ADAS Section 502.3.3 and/or 1991 ADA Standards for Accessible Design. The premises
22 failed to have compliant parking stall striping and markings by having dilapidated and in need of
23 repairs which Plaintiff requires as Plaintiff utilizes a wheelchair due to the Plaintiff’s disability
24 and such handicapped accessible parking stalls are necessary. Said barrier is covered by the A.D.A.
25 guidelines and is in nonconformity with the requirements for such architecture.
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1 15(b). Failure to provide ADA compliant parking stall width at the subject property in
2 violation of 2010 ADAS Section 502.2 and/or 1991 ADA Standards for Accessible Design. The
3 premises failed to provide compliant parking stall widths for disabled parking which Plaintiff
4 requires as Plaintiff utilizes a wheelchair due to the Plaintiff's disability and such handicapped
5 accessible parking stalls are necessary. Said barrier is covered by the A.D.A. guidelines and is in
6 nonconformity with the requirements for such architecture.
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9 15(c). Failure to provide ADA compliant cross slope grading at the subject property in
10 violation of 2010 ADAS Section 502.4 and/or 1991 ADA Standards for Accessible Design. The
11 premises failed to have compliant wheelchair accessible cross slope grading as slopes exceed 2%
12 as Plaintiff utilizes a wheelchair for mobility. Said barrier is covered by the A.D.A. guidelines
13 and is in nonconformity with the requirements for such architecture.
14

15 15(d). Failure to provide ADA compliant parking stall signage, in violation 2010 ADAS
16 Section 502.6, and/or 1991 ADA Standards for Accessible Design. The premises failed to have
17 compliant parking stall signage as Plaintiff utilizes a wheelchair due to the Plaintiff's disability
18 and such handicapped accessible parking stalls are necessary. Said barrier is covered by the A.D.A.
19 guidelines and is in nonconformity with the requirements for such architecture.
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21 15(e). Failure to provide ADA compliant parking access aisles at the subject property in
22 violation of 2010 ADAS Section 502.3.1 and/or 1991 ADA Standards for Accessible Design. The
23 premises failed to provide any compliant parking access aisles measuring a minimum of 5 feet
24 wide which Plaintiff requires as Plaintiff utilizes a wheelchair due to the Plaintiff's disability and
25 such handicapped accessible parking stalls are necessary. Said barrier is covered by the A.D.A.
26 guidelines and is in nonconformity with the requirements for such architecture.
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1 15(f). Failure to provide ADA compliant parking access aisle cross slope and running slope
2 at the subject property in violation of 2010 ADAS Section 502.2 and/or 1991 ADA Standards for
3 Accessible Design. The premises contains non-compliant parking access aisles with excessive
4 cross and running slopes which Plaintiff requires as Plaintiff utilizes a wheelchair due to the
5 Plaintiff's disability and such handicapped accessible parking stalls are necessary. Said barrier is
6 covered by the A.D.A. guidelines and is in nonconformity with the requirements for such
7 architecture.
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9 15(g). Failure to provide ADA compliant accessible route from accessible parking spaces
10 to the accessible building entrance in violation of 2010 ADAS Section 206.2.1 and/or 1991 ADA
11 Standards for Accessible Design. The premises failed to have a compliant accessible route from
12 accessible parking spaces to the accessible building Plaintiff requires as Plaintiff utilizes a
13 wheelchair due to the Plaintiff's disability and such architecture is necessary. Said barrier is
14 covered by the A.D.A. guidelines and is in nonconformity with the requirements for such
15 architecture.
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17 15(h). Failure to provide ADA compliant accessible route width clearance in violation of
18 20013 WSBS Section 1101.2.2. The premises failed to have a compliant accessible route width
19 from accessible parking spaces to the accessible building Plaintiff requires as Plaintiff utilizes a
20 wheelchair due to the Plaintiff's disability and such architecture is necessary. Said barrier is
21 covered by the A.D.A. guidelines and Washington guidelines and is in nonconformity with the
22 requirements for such architecture.
23

24 15(i). Failure to provide ADA compliant transaction counters height at the subject property
25 in violation of 2010 ADAS Section 904.4.1 and 904.4.2 and/or 1991 ADA Standards for
26 Accessible Design. The premises failed to have a compliant transaction counters with compliant
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1 height restrictions for wheelchair access as Plaintiff utilizes a wheelchair for mobility. Said barrier
2 is covered by the A.D.A. guidelines and is in nonconformity with the requirements for such
3 architecture.

4 15(j). Failure to provide ADA compliant accessible merchandise reach range, throughout
5 the subject facility, in violation of 2010 ADAS Section 308.1 and/or 1991 ADA Standards for
6 Accessible Design. The premises failed to have compliant accessible merchandise reach ranges
7 for wheelchair access as Plaintiff utilizes a wheelchair due to the Plaintiff's disability and such
8 handicapped accessible parking stalls are necessary. Said barrier is covered by the A.D.A.
9 guidelines and is in nonconformity with the requirements for such architecture.
10

11 15(k). Failure to provide ADA compliant point of sale, merchandise, and display reach
12 range, throughout the subject facility, in violation of 2010 ADAS Section 308.1 and/or 1991 ADA
13 Standards for Accessible Design. The premises failed to have compliant point of sale,
14 merchandise, and display reach ranges for wheelchair access as Plaintiff utilizes a wheelchair due
15 to the Plaintiff's disability and such handicapped accessible parking stalls are necessary. Said
16 barrier is covered by the A.D.A. guidelines and is in nonconformity with the requirements for such
17 architecture.
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19 15(l). Failure to provide access to and use of ADA compliant restroom facilities,
20 including, but not limited to, compliant restroom door, signage, hardware, the required restroom
21 maneuverability clear floor space, toilet and lavatory clear floor spaces, entry door clear floor
22 space, accessible grab bars, accessible dispenser heights, and mirror height, in violation of 2010
23 ADAS Section 213.2 and/or 1991 ADA Standards for Accessible Design. The premises
24 contained multiple non-compliant features for wheelchair access as Plaintiff utilizes a wheelchair
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1 for mobility. Said barrier is covered by the A.D.A. guidelines and is in nonconformity with the
2 requirements for such architecture.

3 16. The above-referenced barriers will likely cause a repeated real injury in fact in a
4 similar way if not remedied when the Plaintiff frequents this property again as described
5 previously. Each of these barriers interfered with the Plaintiff's full and equal enjoyment of the
6 facility and deterred Plaintiff from encountering all applicable barriers at the premises by failing
7 to allow Plaintiff the same access due to the Plaintiff's disability as those enjoy without disabilities.
8

9 17. Upon information and belief, there are other current non-compliant barrier access
10 violations of the ADA at Defendants' premises, which may only be discovered and properly
11 identified once a full inspection of the premises is completed and identified due to Plaintiff being
12 deterred from discovering each and every barrier as a result of encountering the above-listed
13 violations.
14

15 18. As of the date of the filing of this suit, the readily achievable barriers and other
16 violations of the ADA still exist and have not been remedied or altered in such a way as to
17 effectuate compliance with the provisions of the ADA. The barriers to access at the premises, as
18 described above, have severely diminished Plaintiff's ability to avail Plaintiff of the goods and
19 services offered at the Subject Facilities, and compromise Plaintiff's safety.
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21 19. Pursuant to the ADA, 42 U.S.C. §12101 *et. seq.*, and 28 C.F.R. §36.304, the
22 Defendants were required to make the Subject Facility, a place of public accommodation,
23 accessible to persons with disabilities since January 28, 1992. To date, the Defendants have failed
24 to comply with this mandate.
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1 20. The Plaintiff has been obligated to retain the undersigned counsel for the filing and
 2 prosecution of this action. The Plaintiff is entitled to have his reasonable attorney's fees, costs and
 3 expenses paid by the Defendants, pursuant to 42 U.S.C. §12205.

4 21. Pursuant to 42 U.S.C. §12188, this Court is vested with the authority to grant the
 5 Plaintiff's injunctive relief; including an order to alter the subject facilities to make them readily
 6 accessible to, and useable by, individuals with disabilities to the extent required by the ADA and
 7 closing the subject facility until the requisite modifications are completed.
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 10 **COUNT II: WASHINGTON LAW AGAINST DISCRIMINATION**

11 22. Plaintiff incorporates by reference all allegations in the paragraphs above.

12 23. Plaintiff is a qualified individual with a disability within the meaning of the
 13 Washington Law Against Discrimination.
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15 24. Section 49.60.030(1) of the Revised Code of Washington provides in pertinent part:
 16 "The right to be free from discrimination because of . . the presence of any sensory, mental, or
 17 physical disability . . is recognized as a declared to be a civil right. This right shall include, but not
 18 be limited to . . . (b) the right to the full enjoyment of any of the accommodations, advantages,
 19 facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement .
 20 . ."
 21

22 25. Defendants have violated and continue to violate §§ 49.60.010 *et seq.*, of the
 23 Revised Code of Washington by violating multiple accessibility requirements under the ADA.

24 26. Defendants' actions constitute discrimination against persons with disabilities and
 25 violate the Washington Law Against Discrimination, Revised Code of Washington §§ 49.60.010
 26 *et seq.*, in that persons with mobility disabilities have been and are denied full and equal
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1 enjoyment of the accommodations, advantages, facilities, privileges, and services that Defendant
2 provides to individuals who do not have disabilities.

3 27. As a direct and proximate result of Defendants' discriminatory conduct as alleged
4 in this Complaint for Declaratory and Injunctive Relief, the Plaintiff has suffered and continues
5 to suffer difficulty, hardship, isolation, and segregation and is denied the full and equal
6 enjoyment of services that the Washington Law Against Discrimination requires due to
7 Defendant's failure to remediate barriers.
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9 28. Defendants' property does not comply with the ADA's accessibility laws and
10 regulations.
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12 29. Because Defendants' property does not comply with the ADA's accessibility laws
13 and regulations, declaratory and injunctive relief are appropriate remedies under the Washington
14 Law Against Discrimination. *See e.g. Kucera v. Dep't of Transp.*, 140 Wash. 2d 200, 209 (2000).
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16 30. Pursuant to RCW § 49.60.030(2), Plaintiff is entitled to declaratory and
17 injunctive relief and to recover from Defendants, reasonable attorneys' fees and costs incurred
18 in bringing this action.

19 PRAYER FOR RELIEF

20
21 WHEREFORE, the Plaintiff hereby demands judgment against the Defendants and the
22 Court declare that

23 A. The subject premises and facilities violate Title III of the Americans with
24 Disabilities Act and the Washington Law Against Discrimination;
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- 1 B. The Court enter an Order requiring the Defendants to alter their facilities and
2 amenities to make them accessible to and usable by individuals with disabilities to
3 the full extent required by Title III of the ADA;
4
5 C. Any portions of the Defendant's premises identified as being non-compliant under
6 the ADA guidelines be enjoined from being open to the public until such time that
7 Defendants establish those areas are in full compliance with ADA requirements.
8
9 D. The Court enter an Order directing the Defendants to evaluate and neutralize their
10 policies, practices and procedures toward persons with disabilities, for such
11 reasonable time so as to allow the Defendants to undertake and complete corrective
12 procedures to the Subject Facility;
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14 E. The Court award reasonable attorney's fees, all costs (including, but not limited to
15 court costs and expert fees) and other expenses of suit, to the Plaintiff; and
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17 F. The Court award such other and further relief as it deems necessary, just and proper.

18 DATED this 2 March 2021

19 Respectfully submitted,

20
21 /s/ M. William Judnich

22 M. William Judnich

23 WSBA #56087

24 Enabled Law Group

25 P.O. Box 4523

26 Missoula, Montana 59806

27 Telephone: 406-493-1084

Email: MJ@Enabledlawgroup.com